

SENATE BILL NO. 134

INTRODUCED BY M. WHEAT

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING APPLICATION OF TITLE 33, MCA, STATUTES TO CAPTIVE INSURANCE COMPANIES REGARDING VOLUNTARY DISSOLUTIONS AND LIMITS ON AGGREGATE PREMIUM TAXES AND CERTAIN OTHER TAXES; CLARIFYING THAT RISK RETENTION GROUP STATUTES APPLY TO CERTAIN CAPTIVE INSURERS; AND AMENDING SECTIONS 33-28-105, 33-28-201, AND 33-28-207, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 33-28-105, MCA, is amended to read:

"33-28-105. Formation of captive insurance companies. (1) A pure captive insurance company or a sponsored captive insurance company must be incorporated as a stock insurer with its capital divided into shares and held by the stockholders.

(2) An association captive insurance company or an industrial insured captive insurance company may be:

(a) incorporated as a stock insurer with its capital divided into shares and held by the stockholders;
(b) incorporated as a mutual insurer without capital stock, the governing body of which is elected by the member organizations of its association or associations; or

(c) organized as a reciprocal insurer under Title 33, chapter 5.

(3) A captive insurance company incorporated or organized in this state may not have less than three incorporators, at least one of whom must be a resident of this state.

(4) (a) In the case of a captive insurance company formed as a corporation and before the articles of incorporation are transmitted to the secretary of state, the incorporators shall file a copy of the proposed articles of incorporation and a petition with the commissioner requesting the commissioner to issue a certificate that finds that the establishment and maintenance of the proposed corporation will promote the general good of the state. In reviewing the petition, the commissioner shall consider:

(i) the character, reputation, financial standing, and purposes of the incorporators;

1 (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications
2 of the officers and directors; and

3 (iii) any other factors that the commissioner considers appropriate.

4 (b) If the commissioner does not issue a certificate or finds that the proposed articles of incorporation
5 of the captive insurance company do not meet the requirements of the applicable laws, including but not limited
6 to 33-2-112, the commissioner shall refuse to approve the draft of the articles of incorporation and shall return
7 the draft to the proposed incorporators, together with a written statement explaining the refusal.

8 (c) If the commissioner issues a certificate and approves the draft articles of incorporation, the
9 commissioner shall forward the certificate and an approved draft of articles of incorporation to the proposed
10 incorporators. The incorporators shall prepare two sets of the approved articles of incorporation and shall file
11 one set of articles of incorporation with the secretary of state as required by the applicable law and one set with
12 the commissioner.

13 (5) The capital stock of a captive insurance company incorporated as a stock insurer may be authorized
14 with no par value.

15 (6) At least one of the members of the board of directors of a captive insurance company must be a
16 resident of this state.

17 (7) (a) A captive insurance company formed as a corporation has the privileges and is subject to the
18 provisions of general corporation law, as well as the applicable provisions contained in this chapter.

19 (b) In the event of conflict between the provisions of general corporation law and this chapter, the
20 provisions of this chapter control.

21 (8) (a) With respect to a captive insurance company formed as a reciprocal insurer, the organizers shall
22 petition and request that the commissioner issue a certificate that finds that the establishment and maintenance
23 of the proposed association will promote the general good of the state. In reviewing the petition, the
24 commissioner shall consider:

25 (i) the character, reputation, financial standing, and purposes of the organizers;

26 (ii) the character, reputation, financial responsibility, insurance experience, and business qualifications
27 of the attorney-in-fact; and

28 (iii) any other factors that the commissioner considers appropriate.

29 (b) The commissioner may either approve the petition and issue the certificate or reject the petition in
30 a written statement of the reasons for the rejection.

(c) A captive insurance company formed as a reciprocal insurer has the privileges and is subject to the provisions of Title 33, chapter 5, in addition to the applicable provisions of this chapter. If there is a conflict between Title 33, chapter 5, and this chapter, the provisions of this chapter control. If a reciprocal insurer is determined to be subject to other provisions of Title 33, chapter 5, the other provisions of chapter 5 are not applicable to a reciprocal captive insurance company formed under this chapter unless those provisions of chapter 5 are expressly made applicable to captive insurance companies.

(d) The subscribers' agreement or other organizing document of a captive insurance company formed as a reciprocal insurer may authorize a quorum of a subscribers' advisory committee to consist of at least one-third of the number of its members.

(9) Except as provided in 33-28-306, the provisions of Title 33 pertaining to mergers, consolidations, conversions, mutualizations, voluntary dissolutions, and redomestications apply in determining the procedures to be followed by captive insurance companies in carrying out any of those transactions.

(10) With respect to a branch captive insurance company, the foreign captive insurance company shall petition and request that the commissioner issue a certificate that finds that, after considering the character, reputation, financial responsibility, insurance experience, and business qualifications of the officers and directors of the foreign captive insurance company, the licensing and maintenance of the branch operation will promote the general good of the state. The foreign captive insurance company may apply to the secretary of state for a certificate of authority to transact business in this state after the commissioner's certificate is issued."

Section 2. Section 33-28-201, MCA, is amended to read:

"33-28-201. Tax on premiums collected. (1) (a) Each captive insurance company shall pay to the commissioner, on or before March 1 of each year, a tax on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company ~~in this state~~ during the year ending December 31, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums, including dividends on unabsorbed premiums or premium deposits returned or credited to policyholders.

(b) The tax on direct premiums collected in this state must be calculated as follows:

(i) 0.4% on the first ~~20~~ \$20 million ~~dollars~~;

(ii) 0.3% on the next ~~20~~ \$20 million ~~dollars~~;

(iii) 0.2% on the next ~~20~~ \$20 million ~~dollars~~; and

(iv) 0.075% on each subsequent dollar collected.

(2) (a) Each captive insurance company shall pay to the commissioner on or before March 1 of each year a tax on assumed reinsurance premiums.

(b) A reinsurance tax does not apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (1).

(c) A reinsurance premium tax is not payable in connection with the receipt of assets in exchange for the assumption of loss reserves and other liabilities of another insurer under common ownership and control if the transaction is part of a plan to discontinue the operations of the other insurer and if the intent of the parties to the transaction is to renew or maintain the business with the captive insurance company.

(d) The amount of the reinsurance tax must be calculated as follows:

(i) 0.225% on the first ~~20~~ \$20 million ~~dollars~~ of assumed reinsurance premiums;

(ii) 0.150% on the next ~~20~~ \$20 million ~~dollars~~ of assumed reinsurance premiums; and

(iii) 0.050% on each subsequent dollar of assumed reinsurance premiums.

(3) (a) If the aggregate taxes to be paid by a captive insurance company calculated under subsections (1) and (2) amount to less than \$5,000 in any year, the captive insurance company shall pay a tax of \$5,000 for that year.

(b) Aggregate taxes to be paid by a captive insurance company under this section may not exceed \$100,000 in any year.

(4) Two or more captive insurance companies under common ownership and control must be taxed as though they were a single captive insurance company.

(5) For the purposes of this section, "common ownership and control" means:

(a) in the case of stock corporations, the direct or indirect ownership of 80% or more of the outstanding voting stock of two or more corporations by the same shareholder or shareholders; and

(b) in the case of mutual corporations, the direct or indirect ownership of 80% or more of the surplus and the voting power of two or more corporations by the same member or members.

(6) Only the branch business of a branch captive insurance company is subject to taxation under the provisions of this section."

Section 3. Section 33-28-207, MCA, is amended to read:

"33-28-207. Applicable laws. (1) The following apply to captive insurance companies:

(a) definitions of property insurance provided in 33-1-210, casualty insurance provided in 33-1-206, life insurance provided in 33-1-208, health insurance coverage provided in 33-22-140, and disability income insurance provided in 33-1-235;

(b) the limitation provided in 33-2-705 on the imposition of other taxes;

(c) the provisions relating to supervision, rehabilitation, and liquidation of insurance companies as provided for in Title 33, chapter 2, part 13₁₂; and

(d) the provisions of 33-18-201, 33-18-203, 33-18-205, and 33-18-242 ~~apply to captive insurance companies.~~

(2) This chapter may not be construed as exempting:

(a) a captive insurance company, its parent, or affiliated companies from compliance with the laws governing workers' compensation insurance; or

(b) a captive insurance company that is a risk retention group from complying with the provisions of Title 33, chapter 11.

(3) Except as expressly provided in this chapter, the provisions of Title 33 do not apply to captive insurance companies."

- END -